

2.2 **Name.** The name of the Company is Maryland Carrier Acquisition Company, L.L.C.

2.3 **Principal Office.** The Company may locate its principal office and other places of business at any place or places within the State of Maryland as the Managers may from time to time deem advisable.

2.4 **Principal Office and Resident Agent.** The Company's initial principal office shall be at the office of its registered agent at \_\_\_\_\_, Maryland \_\_\_\_\_. and the name of its initial registered agent at such address shall be \_\_\_\_\_. The registered office and registered agent may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Maryland State Department of Assessments and Taxation pursuant to the Maryland Act.

### **Article III**

#### **Business and Nature of the Company**

3.1 **Permitted Businesses.** The business of the Company shall be:

- (a) To issue a Request For Proposals ("RFPs") to solicit bids from vendors interested in entering into the Master Contract to perform the functions of the Prime Vendor;
- (b) To develop and implement procedures for reviewing bids responsive to the RFP and selecting the winning bid;
- (c) After a bid is selected and before execution of the Master Contract, to ratify and approve the Master Contract;
- (d) To execute the Master Contract and to execute other contracts with any other vendor for goods or services, to negotiate changes in terms and conditions of the Master Contract and any other contract, and to renew or rebid the Master Contract and any other contract, and to terminate the Master Contract and any other contract as circumstances require;
- (e) To supervise and oversee the Prime Vendor as well as any subcontractor or vendor to ensure compliance with Master Contract requirements;

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(f) To own and control all intellectual property rights and confidential information associated with the activities of the MCAC pursuant to the terms and conditions set forth in Exhibit C;

(g) To purchase or own such facilities and other assets as the MCAC may, from time to time, reasonably require for its business; and to exercise all other powers necessary to or reasonably related to the MCAC's business that may legally be exercised by limited liability companies under the Maryland Act; and

(h) To engage in all activities necessary, customary, convenient, incidental or related to any of the foregoing.

3.2 No Partnership Intended for Non-Tax Purposes. The Members have formed the Company under the Maryland Act, and expressly do not intend hereby to form a partnership under any state partnership act or limited partnership act. The Members do not intend to be partners one to another, or partners as to any third party.

## **Article IV**

### **Rights and Obligations of Members**

4.1 Membership Interests. Each Member shall have and retain a Membership Interest equivalent in every respect to the Membership Interest of any other Member. At all times, each Member shall be entitled to one vote by its respective Manager, and thus equal voting power, on all matters set forth in this Agreement requiring the vote of Managers.

4.2 Limitation of Liability. No Member or Manager shall be obligated for any debt, obligation or liability of the Company, whether arising in contract, tort or otherwise. A Member will not be liable to any person that is not a Member for any debts or losses of the Company beyond the Member's respective Capital Account and any obligations of the Member under Article IX to make Capital Contributions.

4.3 Nature of Interests. There shall not be limited liability company interests in the Company other than Membership Interests as defined in this Agreement.

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4.4 Manager Approval of Certain Transactions. Notwithstanding anything in the Maryland Act to the contrary, the Managers shall approve, without any separate vote of the Members, the matters referred to in Sections 6.4 and 6.5.

4.5 Access to Company Books and Records. Upon reasonable request, each Member or its duly authorized Manager shall have the right, during ordinary business hours and in accordance with Section 4A-406 of the Maryland Act, to inspect and copy Company books and records at the requesting Member's expense.

4.6 Priority and Return of Capital. Except as otherwise expressly provided in this Agreement, no Member shall have priority over any other Member, either for the return of Capital Contributions or for net profits, net losses, or distributions.

4.7 Internal Dispute, Review, Arbitration and Mediation. [to be added by the LNP Steering Committee]

## **Article V**

### **Meetings of Members**

5.1 Meetings of Members. The Managers shall be authorized to call a meeting of the Members from time to time as shall be deemed necessary

## **Article VI**

### **Rights and Duties of, Designation and Election of, and Conduct of Business by Managers**

6.1 Management. All authority of the Members to act and participate in the MCAC shall be vested in the Managers. The business and affairs of the MCAC shall be managed by the Managers. The Managers shall in all cases act collectively as provided in Article VII, and not individually. Without limiting the generality of the foregoing, no Manager acting individually shall be the agent of the MCAC or shall have authority to bind the MCAC, and no debt shall be contracted or liability incurred by or on behalf of the MCAC except by the Managers acting collectively as provided in Article VII or by one or more agents or employees of the MCAC

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acting pursuant to the authority granted to them by the Managers. Only the acts of Managers qualifies to bind their respective Members.

6.2 Number, Tenure and Qualifications. The Company shall have that number of Managers equal to the number of Members. Managers shall be selected as provided in Section 6.3. Each Manager shall hold office until a successor shall have been selected as provided in this Agreement. Managers need not be residents of the State of Maryland.

6.3 Selection and Replacement of Managers.

(a) Selection of Managers; Vacancies. Each Member shall be entitled to (i) select one Manager and, at the option of each Member, an alternate Manager to act in the absence of the primary Manager selected by that Member, and (ii) fill any vacancies resulting from the removal, resignation or death of any such Manager or alternate Manager. The selection of a Manager or alternate Manager shall be set forth in a writing delivered by the Member entitled to select such Manager or alternate Manager, as the case may be, to the Chairman and Secretary.

(b) Removal. A Manager or alternate Manager may be removed at any time, with or without cause, by the Member that selected that Manager or alternate Manager, which Member shall give written notice to the Chairman and Secretary and to the other Members. The removal of any Manager or alternate Manager shall take effect upon the receipt of that notice by the Chairman and Secretary, or at such later time as may be specified in the notice. If a Member ceases to be a Member, the Manager and alternate Manager, if any, selected by that Member shall be removed, without further action of the Members or Managers, as of the date the Member ceases to be a Member.

(c) Resignation. Any Manager or alternate Manager may resign at any time by giving written notice to the Member that selected such Manager, which Member shall give written notice to the Chairman and Secretary and to the other Members. The resignation of any Manager or alternate Manager shall take effect upon receipt of that notice by the Chairman or at

such later time as shall be specified in the notice. Unless otherwise specified in the notice, acceptance of the resignation shall not be necessary to make it effective.

**6.4 Certain Powers of Managers.**

(a) Without limiting the generality of Section 6.1, and subject in all cases to the provisions of Section 6.5, the Managers, acting collectively, shall have power and authority, and shall have the power and authority to authorize the agents of the Company, on behalf of the Company:

(i) to acquire property from any Entity as the Managers may determine. The fact that a Manager or Member is directly or indirectly affiliated or connected with any such Entity shall not prohibit the Managers from dealing with that person;

(ii) to purchase liability and other insurance to protect the Company's property and business;

(iii) to hold and own any Company real and/or personal properties in the name of the Company;

(iv) to execute on behalf of the Company all instruments and documents, including, without limitation: checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company property; assignments; bills of sale; leases; partnership agreements; operating agreements of other limited liability companies; and any other instruments or documents necessary in the opinion of the Managers, to the business of the company;

(v) to designate from time to time the Company's independent public accountants and the location of the Company's principal office;

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(vi) to employ legal counsel, agents, or other experts to perform services for the Company and to compensate them from Company funds;

(vii) to conduct periodic audits of the Administrator;

(viii) to enter into any and all other agreements on behalf of the Company, with any other person for any purpose, in such forms as the Managers may approve; and

(ix) to do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

(b) Unless authorized to do so by this Agreement or by the Managers of the Company, no attorney-in-fact or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by the Managers to act as an agent of the Company in accordance with the previous sentence.

6.5 Matters Requiring Unanimous Manager Approval. The Managers may not approve any of the following actions except by the unanimous vote or written consent of the Managers:

(a) Formation or acquisition of subsidiaries and entering into partnerships, limited liability company agreements, and joint ventures.

(b) Incurrence of (i) any indebtedness (other than trade payables incurred in the ordinary course of business) or lease, guaranty, indemnification or suretyship obligations, or (ii) any indebtedness to a Member or an affiliate of a Member.

(c) Transfer of all or any portion of a Member's Membership Interest.

(d) The approval of (i) the merger or consolidation of the Company with or into another Entity; (ii) the sale, exchange, or other disposition of all, or substantially all, of the

Company's assets which is to occur as part of a single transaction or plan; and (iii) the reorganization of the Company pursuant to an event of bankruptcy.

## **Article VII**

### **Meetings of Managers; Committees**

#### **7.1 Steering Committee.**

(a) Membership. There shall be a Steering Committee, comprised of all Managers of the MCAC. The Steering Committee shall have and may exercise all of the powers and authority of the Managers in the business and affairs of MCAC. All meetings of the Managers described in this Agreement shall be meetings of the Steering Committee.

(b) Chairman. There shall be a Chairman of the Steering Committee, who shall be the PSC Representative. The Chairman, or upon the unavailability of the Chairman, the designate of the Chairman, who shall also be a member of the Commission's Staff, shall conduct and preside at any meeting of the Steering Committee

(c) Secretary. There shall be a Secretary of the Steering Committee, who shall be a Manager selected by the Steering Committee. The Secretary shall keep and distribute detailed minutes of any meeting of the Steering Committee

7.2 Regular Meetings. Regular meetings of the Steering Committee for the transaction of any business may be held on such schedule and at such places as may be determined in advance by the Managers, provided that all Managers are given reasonable notice of the schedule for such meetings. In the event one of the matters referred to in Section 6.5 will be considered at a regular Steering Committee meeting, reasonable written (including by facsimile transmission) notice thereof shall be given to each Manager not less than ten business days prior to the meeting.

7.3 Special Meetings. Special Steering Committee meetings of the Managers may be held at any time and place upon call by the Chairman or any one Manager. Reasonable written (including by facsimile transmission) notice thereof, which notice shall include an agenda, shall

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be given by the individual or individuals calling the meeting, not less than ten business days before the special meeting.

7.4 Telephonic Meetings Permitted. The Managers may participate in a Steering Committee meeting by conference telephone or similar communications equipment by means of which all individuals participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

7.5 Quorum and Actions of Managers.

(a) At all Steering Committee meetings, two-thirds of the Managers shall constitute a quorum for the transaction of business. Provided that a quorum is present, and except as otherwise provided in this Agreement, the act of a simple majority of Managers shall be the act of the Managers.

(b) Notwithstanding the provisions in Section 7.5(a), when ratifying, approving or selecting the winning bidder for the Master Contract or any other contract, the act of a simple majority of all Managers present whose respective Members or affiliates have no direct financial interest in the Master Contract or any other contract ("Disinterested Managers") shall be the act of the Managers, even if the simple majority of Disinterested Managers constitute less than a quorum.

7.6 Compensation; Reimbursement of Expenses. No compensation shall be paid by the Company to any Manager. However, the Managers may be reimbursed for any expenses reasonably incurred by them in conjunction with the business and affairs of the Company.

7.7 Action of Managers Without Meeting. Unless otherwise restricted by this Agreement, any action required or permitted to be taken at any Steering Committee meeting may be taken without a Steering Committee meeting if all the Managers consent thereto in writing and the writing or writings are filed with the minutes of proceedings of the Steering Committee.



7.8 Advisory Committees.

(a) Responsibilities. There shall be the following advisory committees, each such committee to advise the Steering Committee and to consist of such number of individuals as may be determined from time to time by the Managers:

(i) Cost Recovery. The Cost Recovery Committee shall [to be inserted].

(ii) Legal Committee. The Legal Committee shall [to be inserted].

(iii) Network Implementation and Planning Committee. The Network Implementation and Planning Committee shall [to be inserted].

(iv) RFP Drafting. The RFP Drafting Committee shall [to be inserted].

(b) Membership. The Managers shall select the members of each advisory committee. Such members may include Managers, persons who are not Managers, or persons who are not employed by or affiliated with any Member. The Managers may, at any time, remove any member of any advisory committee with or without cause and may designate one or more individuals as alternate members of any advisory committee, who may replace any absent or disqualified committee member at any meeting of the advisory committee. The Managers shall designate an individual to serve as the chair of each of the advisory committees, in each case to preside at all meetings of the respective advisory committees. Each advisory committee also may appoint a secretary (who need not be a member of the committee), who shall keep its records and who shall hold office at the pleasure of the chair.

(c) Other Advisory Committees. The Managers may designate one or more other advisory committees, each such advisory committee to consist of one or more individuals, who may or may not be Managers. The Managers may, at any time, remove any member of any other advisory committee with or without cause and may designate one or more individuals as

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alternate members of any other advisory committee, who may replace any absent or disqualified member at any meeting of the other advisory committee. The Managers shall designate a chair of any other advisory committee, who shall preside at all meetings, and who may also appoint a secretary (who need not be a member of the committee), who shall keep its records and shall hold office at the pleasure of the chair.

(d) Telephonic Meeting Permitted. The advisory committee members may participate in an advisory committee meeting by conference telephone or similar communications equipment by means of which all individuals participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

(e) Regular Meetings. Regular meetings of advisory committees may be held on such schedule and at such places as the advisory committee may from time to time determine in advance, provided that all advisory committee members are given reasonable advance notice of the schedule for such regular meetings.

(f) Special Meetings. Special meetings of advisory committees may be held upon not less than ten business days' notice of the time, place and purposes thereof. Until otherwise ordered by the advisory committee, special meetings shall be held at such time and place as determined by the chair.

(g) Actions at Regular and Special Advisory Committee Meetings; Minutes; Actions Without a Meeting. At any regular or special meeting any advisory committee may exercise any or all of its powers, and any business which shall come before any regular or special meeting may be transacted thereat, provided a simple majority of the advisory committee is present. Unless this Agreement requires the affirmative vote of more than a simple majority of all the members of the advisory committee with respect to an action, the affirmative vote of a simple majority of all of the members of the advisory committee shall be necessary to take any action. Each advisory committee shall keep regular minutes of its proceedings and distribute a copy thereof to each of the Managers and the Chairman and Secretary after each meeting. Any

authorized action by an advisory committee may be taken without a meeting if all the members of that advisory committee consent thereto in writing and the writing or writings are filed with the minutes of the proceedings of that advisory committee.

7.9 Authority of Advisory Committees. Unless authorized to do so by this Agreement or by the Managers, (1) no advisory committee shall have any power or authority to bind the Company in any way or to render the Company liable in any way, and (2) the authority of any advisory committee shall be limited to making recommendations to the Steering Committee as to matters assigned by the Managers.

7.10 Attendance. The Managers shall have the authority to impose sanctions against any person serving as Manager, Alternate Manager or advisory committee member for repeated nonattendance at Steering Committee or advisory committee meetings.

## **Article VIII**

### **Duties and Limitation of Liability of Managers, Members and Persons Serving on Advisory Committees; Indemnification**

8.1 Duties of Managers; Limitation of Liability. The Managers shall perform their duties in good faith, in a manner they reasonably believe to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Manager who so performs the duties of Manager shall not have any liability by reason of being or having been a Manager. A Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct, or a wrongful taking by the Manager.

8.2 Managers Have No Exclusive Duty to Company. The Managers shall not be required to manage the Company as their sole and exclusive function and they, and the Members that selected such Managers, may have other business interests and may engage in other investments or activities in addition to those relating to the Company. Neither the Company nor

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any Member shall have any right, by virtue of this Agreement, to share or participate in such other business interests, investments or activities of a Manager or the income or proceeds derived therefrom. No Manager shall incur liability to the Company or to any Member solely by reason of engaging in any such other business, investment or activity. Nothing in this Agreement shall affect the obligations and liabilities of a Manager to the Member that selected such Manager.

**8.3 Protection of Members and Managers.**

(a) As used in this Section 8.3, the term "Protected Party" refers to the Members and Managers of the Company.

(b) A Protected Party shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Protected Party reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the Company or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

(c) To the extent that, at law or in equity, a Protected Party has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Protected Party, a Protected Party acting under this Agreement shall not be liable to the Company, to any other Protected Party or to any third party for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Protected Party otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Protected Party.

(d) Whenever in this Agreement a Protected Party is permitted or required to make a decision (i) in its "discretion" or under a grant of similar authority or latitude, the Protected Party shall be entitled to consider only such interests and factors as it desires, including

its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Company or any other Person, or (ii) in its "good faith" or under another express standard, the Protected Party shall act under such express standard and shall not be subject to any other or different standard imposed by this Agreement or other applicable law.

**8.4 Indemnification and Insurance.**

(a) Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative or otherwise and whether formal or informal (hereinafter a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a Manager or agent of the Company or is or was serving at the request of the Company as a manager, director, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise, whether the basis of such proceeding is alleged action in an official capacity as a Manager or agent or in any other capacity while serving as such a Manager or agent of the Company, shall be indemnified and held harmless by the Company, provided, however, that there shall be no indemnification of any such person as to matters in respect of which it shall be adjudged in such proceeding that such person has committed an act of fraud, deceit, gross negligence or willful misconduct or has engaged in a wrongful taking.

(b) Advancement of Expenses. Expenses (including attorneys' fees) incurred by an indemnified person in defending any proceeding shall be paid in advance of the proceeding's final disposition upon receipt of an undertaking by such person to repay the amount so advanced if the person is ultimately found not to be entitled to indemnification under Section 8.4(a).

(c) Non-Exclusivity of Rights. The right to indemnification and the advancement of expenses conferred in this Section 8.4 shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of this Agreement, contract, agreement, vote of Managers or otherwise. The Managers are expressly authorized to

adopt and enter into indemnification agreements for Members, Managers and advisory committee members.

(d) Insurance. The Managers may cause the Company to purchase and maintain insurance for the Company or its Members on behalf of any person who is or was or has agreed to become a Manager, advisory committee member or agent of the Company or is or was serving at the request of the Company as a manager, director, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against any liability asserted against such person and incurred in any such capacity or arising out of such status, whether or not the Company would have the power to indemnify such person.

(e) Effect of Amendment. No amendment, repeal or modification of this Section 8.4 shall adversely affect any rights hereunder with respect to any act or omission occurring prior to the date when such amendment, repeal or modification became effective.

8.5 Duties of Persons Serving on Advisory Committees; Limitation of Liability; Indemnification. Persons serving on any advisory committee, whether or not a Manager, shall perform their duties in good faith, in a manner they reasonably believe to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A person serving on an advisory committee who so performs shall not have any liability to the Company or to any Member and shall be entitled to indemnification and insurance in the manner provided for Managers in this Article VIII. A person serving on an advisory committee shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage was the result of fraud, deceit, gross negligence, willful misconduct, or a wrongful taking by such person.

**Article IX**

**Contributions to the Company and Capital Accounts**

9.1 Initial Capital Contribution. Each Member shall make an initial Capital Contribution to the Company of cash within 30 days of its admission to the Company in an amount equal to \$\_\_\_\_\_.

9.2 Additional Capital Contributions - Administrative Expenses.

(a) As used in this Article IX, the term "Administrative Expenses" shall mean those expenses incurred by the Company in the ordinary course of its operations for activities which are of an administrative or ministerial nature, including but not limited to expenses incurred for insurance, bank accounts and banking services, resident agents of the Company, professional services, postage, letterhead, office supplies, and materials and services related to the issuance of the RFP.

(b) Each Member shall be obligated to make additional Capital Contributions of cash to the Company from time to time of its proportionate share of all Administrative Expenses of the Company. Calls for additional Capital Contributions under this Section 9.2 shall be subject to the following terms and conditions:

(1) Calls for additional Capital Contributions may be made only for funds required by the Company to pay Administrative Expenses actually paid or incurred by the Company or reasonably anticipated to be due and payable by the Company within 90 days of the date on which the capital call is made.

(2) Calls for additional Capital Contributions for Administrative Expenses may be made only for amounts approved by a simple majority vote of the Managers.

(3) Calls for additional Capital Contributions under this Section 9.2 shall be made no more frequently than once per calendar month

(c) Calls for additional capital under this Section 9.2 shall be made by the Chairman by delivery of written notice (a "Capital Call Notice") to each Member describing (i)

the total amount of additional Capital Contributions required of all Members, (ii) the uses and applications of the additional Capital Contributions, (iii) that Member's proportionate share of the total additional Capital Contributions, and (iv) the date the additional Capital Contribution is required, which date shall not be less than 30 days after the Capital Call Notice has been given.

(d) Additional Capital Contributions called for under this Section 9.2 shall be divided equally among the Members.

9.3. Additional Capital Contributions - Extraordinary Expenses.

(a) As used in this Section 9.3. the term "Extraordinary Expenses" shall mean those expenses that do not qualify as "Administrative Expenses". **[Define further; add minimum dollar amount?]**

(b) Each Member shall be obligated to make additional Capital Contributions of cash to the Company from time to time of its share of all Extraordinary Expenses of the Company. Calls for additional Capital Contributions under this Section 9.3 shall be subject to the following terms and conditions:

(1) Calls for additional Capital Contributions may be made only for funds required by the Company to pay Extraordinary Expenses actually paid or incurred by the Company or reasonably anticipated to be due and payable by the Company within 90 days of the date on which the capital call is made.

(2) Calls for additional Capital Contributions for Extraordinary Expenses may be made only for amounts approved by two thirds vote of the Managers.

(3) Calls for additional Capital Contributions under this Section 9.3 shall be made no more frequently than once per three calendar months.

(c) Calls for additional Capital Contributions under this Section 9.3 shall be made by the Chairman by delivery of a Capital Call Notice to each Member describing (i) the total amount of additional Capital Contributions required of all Members, (ii) the uses and applications of the additional Capital Contributions, (iii) that Member's share of the total



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additional Capital Contributions, and (iv) the date the additional Capital Contributions is required, which date shall not be less than 30 days after the Capital Call Notice has been given.

(d) Additional Capital Contributions called for under this Section 9.3 shall be divided according to [**allocation to be determined**].

9.4. Capital Accounts. An individual capital account (the "Capital Account") shall be maintained for each Member. The Capital Account of a Member shall consist of its initial Capital Contribution and shall be *increased by* (i) the amount of any additional Capital Contributions and (ii) the amount of all net profits (and any item thereof) allocated to such Member, and *decreased by* (iii) the amount of all distributions to such Member and (iv) the amount of all net losses (and any item thereof) allocated to such Member. The Capital Accounts shall be determined, maintained and adjusted in accordance with Section 704(b) of the Internal Revenue Code and the Treasury Regulations thereunder.

9.5. General Rules Relating to Capital of the Company:

(a) No Member shall be personally liable for the return of the Capital Contributions of the Members, or any portion thereof, it being expressly understood that such return of contributions, if any, shall be made solely from the Company assets.

(b) No Member shall have the right to withdraw or receive any return of its Capital Contributions. No Member shall have any right to demand or receive property (in return of its Capital Contributions).

**Article X**

**Allocations, Income Tax, Distributions, Elections,  
Books and Records and Returns**

10.1. Allocation of Profits and Losses.

(a) Net profits or net losses of the Company, as the case may be, shall be determined for each fiscal year of the Company in accordance with generally accepted

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accounting principles as from time to time in effect. Net profits and net losses for each fiscal year shall be allocated among the Members pro rata.

(b) Except as may be otherwise required under the Internal Revenue Code or the Treasury Regulations thereunder, all items of income, gain, and loss (and items thereof) for income tax purposes shall be allocated among the Members in the same proportions as net profits and net losses were allocated to the Members hereunder.

10.2. Distributions Prior to Dissolution and Termination. Prior to the dissolution and termination of the Company, no distributions shall be made by Company to the Members without the unanimous consent of the Managers. Any distributions under this Section 10.2 shall be made to the Members pro rata.

10.3. Books, Records and Reports.

(a) The books and records of the Company shall be maintained by the Secretary and shall be available for examination by any Member or its duly-authorized representatives, during regular business hours.

(b) The Chairman shall cause the Company to furnish to the Members within ninety (90) days of the end of each fiscal year (i) a complete accounting of the affairs of the Company, and (ii) appropriate information to be used by the Members for reporting their respective shares of the profits and losses of the Company for income tax purposes. The cost of such financial and tax reports shall be an expense of the Company.

10.4. Fiscal Year; Methods of Accounting. The fiscal year of the Company and the method of accounting to be used in keeping the books of the Company shall be determined by the Steering Committee in accordance with applicable law.

10.5. Tax Elections. All tax elections required or permitted to be made by the Company shall be made by the Steering Committee.

**Article XI**

**Transferability and Withdrawal**

11.1 Restrictions on Transferability. No Member shall sell, give, pledge, encumber, assign, transfer or otherwise dispose of, voluntarily or involuntarily or by operation of law (hereinafter referred to as "Transfer"), all or any portion of its Membership Interest without the prior unanimous written consent of the Managers. Any attempted Transfer in contravention of any of the provisions of this Agreement shall be void *ab initio* and shall not bind or be recognized by the Company or the other Members.

11.2 Voluntary Withdrawal. Any Member may, at any time and for any reason, withdraw from the Company as a Member upon 90 days' prior written notice to such effect delivered to the Company and each other Member, *provided, however*, that no Member shall have any right to receive any return of its Capital Contributions or any positive balance in its Capital Account upon any such voluntary withdrawal.

11.3 Involuntary Withdrawal. Upon bankruptcy as described in Section 4A-606(3) or (4) of the Maryland Act, a Member shall cease to be a Member of MCAC.

**Article XII**

**Membership**

12.1 Admission to Membership. From the date of the formation of the Company, membership in the Company will be limited to: (1) all carriers certificated by the Commission to provide local exchange telecommunications service in Maryland that express an intent to port numbers in Maryland, when local number portability is available, or (2) other carriers that express an intent to port numbers in Maryland when local number portability is available. The Managers reserve the right to modify this membership criteria from time to time as appropriate.

12.2 Financial Adjustments. [provisions governing retroactive allocation of losses, income, expense deductions, and benefits for new Members may be inserted]

12.3 **Membership Requirements.** To attain membership in the Company, an Entity must: (1) demonstrate to the Managers that it meets the admissions criteria in Section 12.1, (2) execute a written counterpart to this Agreement, and (3) contribute its Initial Capital Contribution as determined by the Managers. Failure to satisfy the aforementioned requirements will result in denial of membership or revocation of membership which shall be implemented by the Managers any time after 30 days written notice has been provided to the Member. To maintain membership in the Company, a Member must comply with all terms and conditions of this Agreement, and any failure to so comply will result in revocation of membership which shall be implemented by the Managers any time after 30 days written notice has been provided to the Member.

### **Article XIII**

#### **Dissolution and Termination**

13.1 **Dissolution.** The Company shall be dissolved upon the occurrence of either of two events:

- (a) by the written consent of two-thirds of the Managers; or
- (b) upon the expulsion, bankruptcy (as defined in the Maryland Act), dissolution, or revocation of corporate charter of any Member (a "Withdrawal Event"), unless: (i) the business of the Company is continued by the consent (which shall not be unreasonably withheld) of all the remaining Members within 90 days after the Withdrawal Event, and (ii) there are at least two remaining Members.

13.2 **Winding Up, Liquidation, and Distribution of Assets.** Upon dissolution, an accounting shall be made by the Company's independent accountants of the accounts of the Company and of the Company's assets, liabilities, and operations, from the date of the last previous accounting until the date of dissolution. The Managers shall immediately proceed to wind up the affairs of the Company. If the Company is dissolved and its affairs are to be wound up, the Managers shall:

(a) sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Managers may determine to distribute any assets to the Members in kind);

(b) allocate any profit or loss resulting from such sales to the Members' Capital Accounts;

(c) discharge all liabilities of the Company, including liabilities to Members who are creditors, to the extent otherwise permitted by law, other than liabilities to Members for distributions, and establish such reserves as may be reasonably necessary to provide for contingencies or liabilities of the Company (for purposes of determining the Capital Accounts of the Members, the amounts of such reserves shall be deemed to be an expense of the Company);

(d) distribute the remaining assets in the following order:

(i) If any assets of the Company are to be distributed in kind, the net fair market value of those assets as of the date of dissolution shall be determined by independent appraisal or by agreement of the Members. Those assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts of the Members shall be adjusted pursuant to the provisions of Article X and Section 9.4 of this Agreement to reflect such deemed sale.

(ii) Distributions shall be made according to the positive balance(s) (if any) of the Members' Capital Accounts (as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs), either in cash or in kind, as determined by the Managers, with any assets distributed in kind being valued for this purpose at their fair market value as determined pursuant to Section 13.2(d)(i).

(e) provide that notwithstanding anything to the contrary in this Agreement, upon the dissolution and termination of the Company, no Member shall have any obligation to

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make a Capital Contribution to restore a negative balance in the Member's Capital Account, and the negative balance of the Member's Capital Account shall not be considered a debt owed by the Member to the Company or to any other Person for any purpose whatsoever.

(f) terminate the Company for tax purposes upon completion of the winding up, liquidation, and distribution of the assets.

(g) comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

13.3 Articles of Cancellation. When all debts, liabilities, and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets have been distributed to the Members, an Articles of Cancellation shall be executed, which Certificate shall set forth the information required by the Maryland Act. Upon the filing of the Articles of Cancellation, the existence of the Company shall cease, except for the purpose of suits, other proceedings, and appropriate action as provided in the Maryland Act. The Managers shall have authority to distribute any Company property discovered after dissolution, convey real estate, and take such other action as may be necessary on behalf of and in the name of the Company.

13.4 Return of Contribution Nonrecourse to Other Members. Except as provided by law or as otherwise expressly provided in this Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contribution or Capital Account. Except as provided by law or as otherwise expressly provided in this Agreement, if the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution or Capital Account of one or more Members, the Members shall have no recourse against any other Member.

**Article XIV**

**Miscellaneous Provisions**

14.1 Further Assurances. At any time and from time to time after the date of this Agreement, each Member will, upon the reasonable request of another Member, perform, execute, acknowledge and deliver all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required to effect or evidence the transactions contemplated hereby or to comply with any laws, rules or regulations.

14.2 Notices. All necessary notices, demands and requests required or permitted to be given hereunder shall be in writing and addressed as set forth in Exhibit A. Notices shall be delivered by a recognized courier service or by facsimile transmission and shall be effective upon receipt, provided that notices shall be presumed to have been received:

(a) if given by courier service, on the second business day following delivery of the notice to a recognized courier service before the deadline for delivery on or before the second business day following delivery to such service, delivery costs prepaid, addressed as aforesaid; and

(b) if given by facsimile transmission, on the next business day, provided that the facsimile transmission is confirmed by answer back, written evidence of electronic confirmation of delivery, or verbal or written acknowledgment of receipt thereof by the addressee. From time to time any party may designate a new address or facsimile number for the purpose of notice hereunder by notice to the other parties in accordance with the provisions of this Section 14.2.

14.3 Application of Maryland Law. This Agreement, and the application and interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Maryland, and specifically the Maryland Act.

14.4 Entire Agreement. This Agreement constitutes the entire agreement of the Members relating to the subject matter hereof and supersedes all prior contracts or agreements,

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whether oral or written, relating to the subject matter hereof. There are no representations, agreements, arrangements or understandings, oral or written, between or among the Members relating to the subject matter of this Agreement which are not fully expressed in this Agreement.

14.5 Amendment. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented or modified orally, but only by an instrument in writing executed by a simple majority of Managers.

14.6 Effect of Waiver of Consent. No waiver or consent, express or implied, by the Company or any Member to or of any breach or default by the Company or any Member in the performance by the Company or such Member of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by the Company or such Member of the same or any other obligations of the Company or such Member hereunder. No single or partial exercise of any right or power, or any abandonment or discontinuance of steps to enforce any right or power, shall preclude any other or further exercise thereof or the exercise of any other right or power. Failure on the part of the Company or a Member to complain of any act of the Company or any Member or to declare the Company or any Member in default, irrespective of how long such failure continues, shall not constitute a waiver by the Company or such Member of its rights hereunder until the applicable statute of limitation period has run.

14.7 Facsimiles. For purposes of this Agreement, any copy, facsimile, telecommunication or other reliable reproduction of a writing, transmission or signature may be substituted or used in lieu of the original writing, transmission or signature for any and all purposes for which the original writing, transmission or signature could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing, transmission or signature, as the case may be.

14.8 Limitation on Rights of Others. Nothing in this Agreement, whether express or implied, shall be construed to give any person (other than the Members hereto and their



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respective legal representatives, permitted successors and assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein, as a third party beneficiary or otherwise. Without limiting the generality of the foregoing, none of the provisions of this Agreement shall be for the benefit of, or enforceable by, any creditors of the Company or any other person. Except and only to the extent provided by applicable statute, no such creditor or other third party shall have any rights under this Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

14.9 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and use of any one right or remedy by any Member shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Members may have by law, statute, ordinance, or otherwise.

14.10 Successors and Assigns. Each and all of the covenants, terms, provisions, and agreements contained in this Agreement shall be binding upon and inure to the benefit of the Members hereto and, to the extent permitted by this Agreement, their respective successors and assigns.

14.11 Dispute Resolution and Arbitration. In the event that any dispute arises between one or more Members and the Company, pertaining to the subject matter of this Agreement and the parties to the dispute are unable to resolve such dispute within a reasonable time through negotiations, such dispute may be resolved as stated in Section 4.7 of this Agreement. If such dispute is not eligible for resolution pursuant to the criteria set forth in Section 4.7, then such dispute shall be resolved by a simple majority vote of the Managers.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed and delivered in its name and on its behalf, all as of the day and year first above written.

**[names of Members to be listed, accompanied by executing signatures of Managers]**